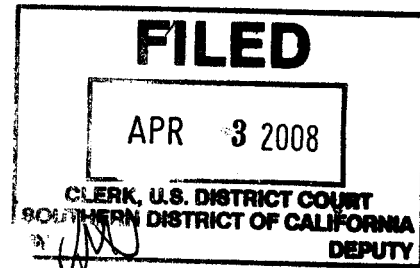


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8
 9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)
)
 12 Plaintiff,)
)
 13 v.)
)
 14 SAUL VARGAS-PEREZ (1),)
)
 15 Defendant.)
 16 _____)

Magistrate Case No. 08MJ0880

**STIPULATION OF FACT AND JOINT
 MOTION FOR RELEASE OF
 MATERIAL WITNESS(ES) AND
 ORDER THEREON**

(Pre-Indictment Fast-Track Program)

17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
 18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and
 19 Caroline P. Han, Assistant United States Attorney, and defendant SAUL VARGAS-PEREZ, by and
 20 through and with the advice and consent of Robert R. Henssler, counsel for defendant, that:

21 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
 22 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
 23 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
 24 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
 25 of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii)
 26 and (v)(II).

27 //

28 CPH:lg:3/26/08

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **April 21, 2008**.

6 4. The material witnesses, Margarito Cruz-Lozano, Carlos Cruz-Lozano and Karol
7 Alvarado-Valencia, in this case:

8 a. Are aliens with no lawful right to enter or remain in the United States;

9 b. Entered or attempted to enter the United States illegally on or about
10 March 18, 2008;

11 c. Were found in a vehicle driven by defendant and in which codefendant
12 Leobardo Lora-Cedano was a passenger in or near Jacumba, California, and that defendant knew
13 or acted in reckless disregard of the fact that they were aliens with no lawful right to enter or remain
14 in the United States;

15 d. Were paying or having others pay on their behalf \$2,500 to others to be
16 brought into the United States illegally and/or transported illegally to their destination therein; and,

17 e. May be released and remanded immediately to the Department of Homeland
18 Security for return to their country of origin.

19 5. After the material witnesses are ordered released by the Court pursuant to this
20 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
21 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any
22 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral
23 attack, that:

24 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
25 substantive evidence;

26 b. The United States may elicit hearsay testimony from arresting agents
27 regarding any statements made by the material witness(es) provided in discovery, and such

1 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements
2 against interest of (an) unavailable witness(es); and,

3 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
4 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
5 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
6 waives the right to confront and cross-examine the material witness(es) in this case.

7 6. By signing this stipulation and joint motion, defendant certifies that defendant has
8 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
9 further that defendant has discussed the terms of this stipulation and joint motion with defense
10 counsel and fully understands its meaning and effect.

11 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
12 immediate release and remand of the above-named material witness(es) to the Department of
13 Homeland Security for return to their country of origin.

14 It is STIPULATED AND AGREED this date.

15 Respectfully submitted,

16 KAREN P. HEWITT
17 United States Attorney

18 Dated: 4/3/08.

19 
CAROLINE P. HAN
Assistant United States Attorney

20 Dated: 3/28/08.

21 
22 ROBERT R. HENSSLER
23 Defense Counsel for SAUL VARGAS-PEREZ

24 Dated: 3/28/08.

25 Saul Vargas Perez
26 SAUL VARGAS-PEREZ
27 Defendant

ORDER


Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 4/3/08.


United States Magistrate Judge